IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.8148 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PUSHPABE I MACWAN

Versus

MUNICIPAL SCHOOL BOARD AHMEDABAD

Appearance:

1. Special Civil Application No. 8148 of 2004

MR PARESH UPADHYAY for Petitioner No. 1

NANAVATI & NANAVATI for Respondent No. 1

MR HS MUNSHAW for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 03/03/2005

ORAL JUDGEMENT

1. RULE. Mr.H.S.Shah, learned advocate for Nanavati & Nanavati, waives service of notice of rule on behalf of respondent No.1 and Mr.H.S.Munshaw, learned advocate, waives service of notice of rule on behalf of respondent

No.2. At the joint request of learned advocates appearing for the parties, the petition is taken up for final hearing today.

2. In the present petition the petitioner has challenged the action of the respondent No.1 in not granting reimbursement of the amount spent by the petitioner on her medical treatment.

3. The petitioner is employed by respondent No.1 and is serving as an Assistant Teacher since 1976. The petitioner has superannuated in October 2004. While in active service, on 27-01-2000 the petitioner developed chest pain and she had to be rushed to Dr. Jivraj Mehta Hospital where she was admitted for further check ups and treatment. She was thereafter referred to Rajasthan Hospital by the doctors at Jivraj Mehta Hospital and the petitioner was, therefore, admitted in Rajasthan Hospital on 01-02-2000 for Coronary Angiography. Angiography was actually performed on 01-02-2000. The result of the examination of the petitioner was that she required a Coronary Bypass Surgery at an early date. She was also advised complete rest for six weeks. A certificate to that effect was issued by the Rajasthan Hospital on 01-02-2000, a copy of which is produced at Annexure-A to the petition. The petitioner was thereafter once again admitted as an indoor patient in the Rajasthan Hospital on 22-02-2000 and a Bypass Surgery was performed on her on 23-02-2000. The petitioner was discharged from the said hospital on 01-03-2000.

4. After having taken the treatment as mentioned above on 01-04-2000 the petitioner submitted a claim of Rs.12,536/- towards Angiography and claim of Rs.1,05,757/- towards Bypass Surgery.

5. Though no communication was made to the petitioner regarding her claim, it appears that there is a correspondence whereby the Audit Section of the respondeat No.2 - Corporation noted that reimbursement of medical claim cannot be granted to the petitioner since the case of the petitioner was not referred by municipal hospital. The petitioner made several representations starting with a representation dated 19-06-2000 but the respondents did not reply to the same nor was the request of the petitioner for being granted medical reimbursement acceded to by the respondents. The petitioner has, therefore, filed the present petition and prayed for a direction for being paid the said amount of Rs.1,18,233/- by way of medical reimbursement.

6. The respondents have appeared and resisted the

petition. It is stated that as per circular of the corporation dated 12-01-1999 the case of the petitioner was not covered since she had not obtained a prior approval from the municipal hospital before taking treatment in a private hospital.

7. Appearing for the petitioner learned advocate Ms.Harshal Pandya for Mr.Paresh Upadhyay, submitted that the stand of the respondents is not justified. It was submitted that the petitioner had to undertake emergency treatment and that, therefore, the respondents cannot insist on her case being referred through the municipal hospital before the petitioner could take the treatment. She has placed reliance on the order dated 29-10-2000 passed by the learned Single Judge of this High Court in Special Civil Application No.9857 of 2002 in which case the claim of a government servant for grant of medical reimbursement was allowed by this Court even though the employee had taken treatment in a hospital in Mumbai since it was found that the employee was residing in Umargaon and Mumbai being closer than Ahmedabad, he was justified in getting himself treated in a hospital at Mumbai.

7.1 The learned Counsel of the petitioner also places reliance on an order dated 25-11-2002 passed by the learned Single Judge of this High Court in Special Civil Application No.3391 of 2001. In the said order this Court allowed the claim of medical reimbursement of the government employee whose son had to take the treatment for heart disease at Rajasthan Hospital. It was observed by this Court that the said hospital is recognized for treatment to the government employees and the claim, therefore, cannot be turned down.

7.2 The learned Counsel for the petitioner also places reliance on the decision of the Hon'ble Supreme Court in the case of Surjit Singh Vs. State of Punjab & Ors., reported in AIR 1996 SC 1388 wherein the Hon'ble Supreme Court upheld the claim of the employee for medical reimbursement for treatment taken in a private institution which was recognized by the Government and it was observed that the government cannot insist on the employee to get himself treated at recognized government institution.

7.3 Reliance is also placed on the decision of Hon'ble Supreme Court in case of State of Punjab & Ors., Vs. Ram Lubhaya Bagga reported in AIR 1998 SC 1703 wherein the Hon'ble Supreme Court turned down the objection of the government and observed that objection

cannot be raised on the ground that the employee who gets heart attack also has to wait in long queue in Government hospital.

8. On the other hand, learned counsel for the respondent No.1 had submitted that the petitioner did not apply for medical reimbursement within time. It is submitted that the claim is not covered under the circular of the corporation. It is also stated that the petition is belated and, therefore, it is required to be rejected.

9. Having considered the rival submissions, it is clear that the petitioner had lodged her claim immediately upon her recovery. As noted earlier, the petitioner was released from hospital on 01-03-2000. She sent the necessary papers for claim of reimbursement on 01-04-2000. It is difficult to understand as to how her claim was belated. The petitioner after having applied for medical reimbursement had made series of representations right from June 2000 to November 2003. None of these representations were replied to. It would be most unjust and unequitable to reject a petition of this kind on the ground that the petitioner did not file the petition earlier. The petitioner was constantly representing to the authorities for grant of reimbursement. At no stage her request was formally turned down. I am, therefore, unable to uphold the contention of the counsel for respondent No.1 that the petition should be dismissed on the ground of delay.

10. With respect to the objection regarding the claim also, I do not find any justification in the stand adopted by the respondents. The petitioner was suffering from serious heart ailment. Due to chest pain, she had to rush to the hospital. Further, investigations revealed that she would need urgent Bypass Surgery which was also performed. When the petitioner is battling for life and struggling to overcome her serious heart ailment and preparing herself for a major heart operation, it is not possible for her first to take permission from the authority before she gets herself properly treated. Under these circumstances, the respondents have not made out a case for denying the claim of the petitioner. It is, therefore, directed that the respondents shall process and sanction the medical reimbursement claim of the petitioner as per the prevalent rates. The same shall be paid over to the petitioner within a period of 04 (four) weeks from the date of receipt of a copy of this order. Rule is made absolute to the aforesaid extent. No order as to costs. Direct Service permitted.

Sd/-
[AKIL KURESHI, J]

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